Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

STERLING CONSULTING CORPORATION,
a Colorado corporation, as receiver for the
Indian Motorcycle Manufacturing Inc.,
a New Mexico corporation,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

APPENDIX FOR WRIT OF CERTIORARI

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(Any footnotes trail end of each document)
No. 00-1317

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

STERLING CONSULTING CORPORATION, a Colorado corporation, as receiver for the Indian Motorcycle Manufacturing Inc., a New Mexico corporation,
Plaintiff-Appellee,

v.

UNITED STATES OF AMERICA,
Intervenor-Appellant.

April 10, 2001, Filed

PRIOR HISTORY:
Appeal from the United States District Court for the District of Colorado. (D.C. No. 95-Z-777). D.C. Judge Zita L. Weinshienk.

DISPOSITION:
District court's judgments REVERSED.

COUNSEL:
Thomas J. Clark (Kenneth W. Rosenberg, with him on the briefs), Tax Division, Department of Justice, Washington, D.C., for Appellant.

John M. Tanner (Ann C. Kiley with him on the brief), Fairfield and Woods, P.C., Denver, Colorado, for Appellee.

JUDGES:
Before BRISCOE, BALDOCK, and MURPHY, Circuit Judges.

OPINIONBY:
MURPHY Circuit Judge.

OPINION:

MURPHY Circuit Judge.

I. INTRODUCTION

This case comes before the court on interlocutory appeal. The government appeals the district court's assertion of jurisdiction over the determination of tax liabilities in a receivership action and the district court's imposition of a deadline upon the IRS for such tax determinations. Exercising jurisdiction pursuant to *28 U.S.C. § 1292*(b), this court holds the Declaratory Judgment Act prohibits the district court from determining corporate tax liabilities in a receivership action and the Anti-Injunction Act bars the district court from enjoining the IRS from assessing and collecting taxes for failure to evaluate tax returns by the court-imposed deadline. The judgment of the district court is therefore **reversed**.

II. BACKGROUND

In April 1995, Eller Industries, Inc., a Colorado corporation, brought this receivership action in the United States District Court for the District of Colorado against Indian Motorcycle Manufacturing, Inc. (IMMI), a New Mexico corporation. The district court placed IMMI into receivership, appointing Sterling Consulting Corporation as

the receiver. During this time, IMMI was one of several companies embroiled in a dispute over the Indian Motorcycle trademark. Three other companies involved in the dispute, Indian Motocycle Company, Inc., Indian Motocycle Apparel & Accessories, Inc., and Indian Motocycle Manufacturing, Inc.[1],have been in bankruptcy in Massachusetts since before 1995, all sharing a common bankruptcy trustee.

In late 1995, the receiver acquired all of the stock of the bankruptcy estates and Indian Motor Company (IMC) from Michael Mandelman. In 1997, the government intervened in this action to enforce federal tax liens for individual income taxes owed by Mandelman against any forthcoming distribution by the receiver. The assets of the receivership estate and bankruptcy estates were combined for sale and eventually sold. Pursuant to an agreement between the bankruptcy trustee and the receiver, $ 3.5 million of the proceeds from the sale of assets was allocated to the bankruptcy estates and placed in an escrow account with the district court in Colorado. The account was established for the payment of claims owed by the bankruptcy estates, subject to the receiver's right to assert competing claims.

In October 1999, the receiver filed a motion with the district court in Colorado asking the court to determine that the bankruptcy estates owed no additional federal taxes above that shown on their tax returns for 1999.[2] The government opposed this motion, claiming the district court lacked jurisdiction to determine the tax liabilities of debtors who were in bankruptcy in Massachusetts.

In December 1999, the bankruptcy trustee filed an emergency motion in Massachusetts Bankruptcy Court seeking approval of his final accounts and distribution of the estates. The government objected to the motion and distribution. During the hearing on the motion in Massachusetts, the government indicated that the tax liabilities of the bankruptcy estates for 1999 would amount to

$ 1.2 million if the top corporate tax rate was applied to the $ 3.5 million allocated to the bankruptcy estates from the sale of the combined estates. It further indicated that the proposed escrow with the receiver of approximately $ 437,000 to cover the potential tax liabilities of the bankruptcy estates was insufficient.

The bankruptcy court entered an order approving the trustee's amended final accounts. In its order, the bankruptcy court attempted to "cede jurisdiction of the determination of the Bankruptcy Estates tax liabilities to the district court in Colorado." The bankruptcy court ordered that $ 1.2 million be disbursed from the bankruptcy estates to the receiver and that the receiver hold the money in escrow for the purpose of covering the potential 1999 tax liabilities of the debtors. The government appealed the bankruptcy court's findings, conclusions, and order to the Bankruptcy Appellate Panel for the First Circuit.[3]

In the meantime, the receiver's motion in federal district court regarding the bankruptcy estates' 1999 income tax liabilities was referred to a magistrate judge. In January 2000, the magistrate overruled the government's jurisdictional objections and ordered the government to respond to the merits of the receiver's motion. In an order entered on March 20, the district court adopted the magistrate's report and ruled that the court had jurisdiction over all matters affecting the receivership estate, including all questions incident to the preservation, collection, and distribution of assets. The court further ruled that it had jurisdiction to determine the bankruptcy estates' liabilities under *28 U.S.C. § 1334*(a), which confers upon the district courts "original and exclusive jurisdiction of all cases under title 11," and *28 U.S.C. § 1334*(b), which confers upon the district courts "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11."

The receiver filed a second motion in district court, asking the court to determine that IMMI and IMC owed no additional federal taxes beyond the amount set forth in their tax returns for certain designated years. The government opposed the motion on jurisdictional grounds, but the magistrate determined that the court had jurisdiction to determine IMMI's and IMC's tax liabilities. The magistrate ordered the IRS to address the merits of IMMI's and IMC's tax returns by August 31, 2000, and to address the merits of the 1999 tax returns for the bankruptcy estates by July 1, 2000. The magistrate further ordered that in the event the IRS failed to comply with the court's order, "the tax returns shall be deemed to have been completed correctly, and the estates shall be deemed to owe no further taxes." The government objected to the magistrate's order.

In an order entered on July 19, 2000, the district court affirmed the magistrate's order and overruled the government's objections. It extended until August 31, however, the deadline by which the IRS needed to address the merits of the bankruptcy estates' tax liabilities. In its order, the district court indicated that the issue of whether it had jurisdiction over the IRS's tax liability determinations for entities within the receivership estate was a controlling question of law as to which there was substantial ground for a difference of opinion.[4] In a separate order entered the same day, the district court also certified the question of whether it had the authority to set enforceable deadlines for such tax determinations. The court concluded that an immediate appeal of these questions would advance the ultimate termination of the case, thereby satisfying the conditions of *28 U.S.C. § 1292*(b). This court stayed the district court orders pending appeal.

III. DISCUSSION

This court's jurisdiction arises pursuant to *28 U.S.C. § 1292*(b), which allows this court to review the district court's

interlocutory order. *See Homeland Stores, Inc. v. Resolution Trust Corp., 17 F.3d 1269, 1271 (10th Cir. 1994).* The controlling questions of law certified by the district court involve (1) its jurisdiction over the government's tax liability determinations for entities within the receivership estate, which includes the debtor corporations in this case, and (2) the district court's authority to set enforceable deadlines for these tax determinations.[5] On appeal, the government claims the district court lacks jurisdiction to determine the income tax liabilities of the five corporations. Further, it argues the district court lacks jurisdiction to order the IRS to complete a tax examination before the expiration of the statutory deadline and to permanently enjoin the assertion of tax liabilities if the IRS fails to meet the court's deadline. This court reviews questions of law, including determinations of jurisdiction, *de novo. See Sac & Fox Nation of Mo. v. Pierce, 213 F.3d 566, 571 (10th Cir. 2000).*

A. Determination of Tax Liabilities

The Declaratory Judgment Act empowers courts to "declare the rights and other legal relations of any interested party seeking such a declaration." *28 U.S.C. § 2201*(a). The grant of authority, however, explicitly excludes cases "with respect to Federal taxes." *Id.* The Act exempts specified proceedings from this general exclusion, thereby allowing declaratory judgments in certain cases that involve federal taxes. *See id.* The exemptions include civil actions involving an antidumping or countervailing duty proceeding and actions brought under *26 U.S.C. § 7428,* which allows for a declaratory judgment with respect to tax-exempt status, and *11 U.S.C. § § 505* or 1146, both of which provide for a determination of taxes for entities in bankruptcy. *See id.* In its motions to the district court regarding the tax liabilities of the five corporations, the receiver requests relief that the Declaratory Judgment Act specifically prohibits the court

from granting. Absent the application of an exception to the statutory prohibition, the Declaratory Judgment Act plainly bars the district court from declaring that the corporations in question owe no additional federal taxes. To hold otherwise would impede the government's ability to assess and collect taxes. *See Wyo. Trucking Ass'n, Inc. v. Bentsen, 82 F.3d 930, 932-33 (10th Cir. 1996).*

As for IMMI, the corporation in receivership, and IMC, a corporation owned by the receiver, there are no relevant exceptions under the Declaratory Judgment Act that permit the district court to determine their tax liabilities. In its motion to the district court regarding the tax liabilities of IMMI and IMC, the receiver did not invoke any exception to the statutory bar and it is apparent from this court's own review that none apply. Thus, the Declaratory Judgment Act explicitly prohibits the district court from granting the requested relief for IMMI and IMC.

In its motion involving the bankruptcy estates' tax liabilities, however, the receiver invoked the power of a district court to make a determination of taxes under *11 U.S.C. § 505,* with *28 U.S.C. § 1334*(b) providing the jurisdictional authority.[6] Although a proceeding under *11 U.S.C. § 505* is exempted from the statutory bar against declaratory judgments with respect to federal taxes, the exception does not apply in this case because the receiver's motion in federal district court does not properly invoke § 505.

Section 505 authorizes bankruptcy courts to "determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid." *11 U.S.C. § 505*(a)(1). This court has previously indicated that "section 505 gives federal courts authority to determine, *in bankruptcy proceedings*, the amount and legality of any tax." *City Vending of Muskogee, Inc. v. Okla. Tax Comm'n, 898 F.2d 122, 124 (10th Cir.*

1990) (emphasis added). The receiver cannot invoke § 505 in this case because the proceeding in federal district court is a receivership action, not a bankruptcy proceeding. Even though § 1334(b) confers jurisdiction on a district court to make a determination of tax liability under § 505, the purpose of § 1334(b) is "to allow district courts in which the bankruptcy case is filed to adjudicate bankruptcy-related actions." *Gruntz v. County of L.A. (In re Gruntz), 202 F.3d 1074, 1083 (9th Cir. 2000).* The receiver's request for a determination of taxes is not related to a bankruptcy proceeding under title 11 in federal district court because there is no such proceeding in the district court. Thus, the district court does not have jurisdiction to provide the requested relief pursuant to § 1334(b) because the action neither arose in, nor was related to, a bankruptcy action in the district court.[7]

Furthermore, the bankruptcy court's attempt to cede jurisdiction over the determination of tax liabilities did not effectuate a transfer of the bankruptcy proceeding to the district court in Colorado pursuant to *28 U.S.C. § 1412,* which might have conferred jurisdiction on the district court over a § 505 action. *See 28 U.S.C. § 1412* ("A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties."). The bankruptcy court did not address the applicability of § 1412 during its hearing on the bankruptcy trustee's motion to approve final accounts or in its order entered two days after the hearing. The court simply indicated that it would cede jurisdiction over the determination of federal taxes to the district court in Colorado because the receiver had the greatest stake in the outcome. Because the bankruptcy court did not transfer the case, there was no bankruptcy proceeding before the district court which would render proper a motion filed under § 505 in Colorado's federal court. Accordingly, the § 505 exception to the prohibition against declaring the rights of parties with

respect to federal taxes does not apply in this case. This court concludes the Declaratory Judgment Act prohibits the district court from declaring that the bankruptcy estates owe no additional federal taxes.

B. Enjoining the IRS

Having decided that the district court has no authority to determine the corporate tax liabilities in this case, this court must turn to the question of whether the district court may enjoin the IRS from determining the tax liabilities of the five corporations should the government fail to consider the corporate tax returns by the court-imposed deadline. The district court characterizes its order as an attempt to set deadlines and create procedures as it would for any party that comes before it. This court agrees, however, with the government's characterization of the district court's order as an attempt to enjoin the IRS from assessing and collecting taxes.

The Anti-Injunction Act provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." *26 U.S.C. § 7421*(a). The Act specifically divests the district court of jurisdiction in order to prevent pre-assessment judicial interference. *See Wyo. Trucking Ass'n, Inc., 82 F.3d at 933.* A statutory framework exists for the determination of taxes by the IRS. *See, e.g., 26 U.S.C. § § 6201*(a) (authorizing and requiring the government "to make the inquiries, determinations, and assessments of all taxes" imposed by the *Internal Revenue Code), 6501(a)* (requiring the government to assess tax liabilities within three years of tax return filing). The district court may not assist a taxpayer in bypassing these procedures by imposing deadlines upon the government simply because the IRS is a party before it. Accordingly, this court concludes the district court lacks the

jurisdiction to enjoin the IRS from assessing and collecting taxes for failure to expedite its determination of taxes.

IV. CONCLUSION

This court holds the Declaratory Judgment Act bars the district court from declaring that the five corporations owe no additional federal taxes. We further hold the Anti-Injunction Act prohibits the district court from enjoining the IRS from assessing and collecting the corporations' taxes for failure to evaluate their tax returns by the court-imposed deadline. Accordingly, the district court orders requiring the IRS to address the merits of the tax returns for the five corporations and prohibiting the government from determining the tax liabilities for failure to comply with the court-imposed deadline are **REVERSED**.

Footnotes

[1] Indian *Motocycle* Manufacturing, Inc. is not to be confused with the company in receivership, Indian *Motorcycle* Manufacturing, Inc.

[2] The original motion included the years 1993 through 1999, but the bankruptcy trustee, the receiver, and the IRS agreed that the tax returns for the years before 1999 were correct with the exception of one deduction.

[3] The Bankruptcy Appellate Panel disposed of this appeal on March 13, 2001, holding that the bankruptcy court erred in ceding jurisdiction to the federal district court in Colorado and reversing the bankruptcy court's order which capped the determination of the debtors' tax liability at $ 1.2 million and made a final distribution of the estates.

[4] A thorough reading of the district court's order suggests that it means to include the three debtor corporations in its reference to "receivership estate."

[5] Also before this court is the government's motion to strike the receiver's first submission of supplemental authority. Because the receiver's submission contains legal arguments, this motion is granted. *See* Fed. R. App. P. 28(j) ("The letter informing the court of supplemental authority must state *without argument* the reasons for the supplemental citations. . . ." (emphasis added))

[6] Section 1334(b) gives district courts original jurisdiction over all civil proceedings "arising under title 11, or arising in or related to cases under title 11." *28 U.S.C. § 1334*(b).

[7] For the same reasons discussed *supra*, *28 U.S.C. § 1334*(a) does not confer the requisite jurisdictional authority upon the district court. *See 28 U.S.C. § 1334*(a) (providing district court with original and exclusive jurisdiction of all cases under title 11).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 95-Z-777

ELLER INDUSTRIES, INC.,
Plaintiff,

V.

INDIAN MOTORCYCLE MANUFACTURING, INC.,
Defendant,

V.

UNITED STATES OF AMERICA,
Intervenor.

ORDER REGARDING TAX ISSUES

ORDER ENTERED BY MAGISTRATE JUDGE O. EDWARD SCHLATTER

This matter comes before the Court upon two motions of Sterling Consulting Corporation, as receiver. The first motion, that no additional taxes are owed by the Bankruptcy Estates, is supported by affidavits of both Stephen M. Rodokalis, as Trustee and the Trustee's Certified Public Accountant. I have reviewed the receiver's Motion, the IRS's Response, the receiver's Reply, and the IRS's Sur-Reply. Further, this Court held hearings on both March 29, 2000, and April 27, 2000.

Regarding the tax returns for tax years before 1999, the receiver, the Trustee, and the IRS have agreed that the tax

returns which were filed are correct save for the treatment of one deduction. This change has been made, and the Court now understands there is no dispute as to those tax years. All that is left is the Trustee's *1999* tax returns.

The receiver asks this Court to enter an Order that no additional taxes are owed by the Trustee in Bankruptcy beyond what is shown on the *1999* tax returns which were attached to the motion. This is of interest to the receiver. If the money is paid in taxes, then it will not be available to the receivership. The receiver is both a claimant in the Bankruptcy Estates and the equity owner of the companies in bankruptcy.

The IRS has previously argued that this Court lacks jurisdiction to make such a determination. Judge Weinshienk ruled on March *16,* 2000, however, that this Court does have such jurisdiction. The IRS now argues that it has not had time to evaluate the tax returns to determine whether they are correct or if more taxes are owed. It has begun an audit of that return, and is scheduled to complete it shortly. Counsel for the IRS has indicated she has every confidence the IRS can reach a determination on the tax returns within several weeks.

By my order of January 10, 2000, I gave the IRS until January 20, 2000, to address the merits of the tax returns. The IRS appealed that ruling, and it was affirmed by Judge Weinshienk on March *16,* 2000. The IRS has not yet addressed the issue of the merits of the correctness of the *1999* tax return.

The second motion is the receiver's motion that the tax returns of Indian Motorcycle Manufacturing, Inc. (for tax years *1995 - 1999)* and Indian Motor Company (for tax years 1993 1 *999)* are true and correct. This motion was filed March 3, 2000, and is supported by the affidavit of Richard

Block, as president of the corporation that is the receiver. The affidavit discloses both those corporations have been dissolved. The IRS responded March 27, 2000, again arguing this Court did not have subject matter jurisdiction to hear the issue. For the reasons stated in my Order of January 10, 2000, and Judge Weinshienk's Order of March *16,* 2000, the Court does have jurisdiction.

It is therefore ORDERED that the IRS shall have until July 1, 2000, to address the merits of the *1999* tax return for the Bankruptcy Estates. The receiver shall have fifteen *(15)* days thereafter to reply. The IRS shall have until August 31 , 2000, to address the merits of the tax returns of Indian Motorcycle Manufacturing, Inc. (for tax years *1995 - 1999)* and Indian Motor Company (for tax years I 993 - I 999). The receiver shall have fifteen *(1* 5) days thereafter in which to reply.

It is FURTHER ORDERED that in the event that the IRS fails to conclude its consideration of the returns for the receivership and Bankruptcy Estates in compliance with the above dates, the returns shall be deemed to have been completed correctly, and the estates shall be deemed to owe no further taxes.

It is FURTHER ORDERED that this Court will hold a status conference regarding the tax Issues on May 30, 2000, at the hour of 3:00 p.m. in Room C-I 62 of the U.S. Courthouse located at 1929 Stout Street, Denver, Colorado.

Dated at Denver, Colorado, this day of: May 9, 2000

BY THE COURT:

O.Edward Schlatter
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 95-Z-777

ELLER INDUSTRIES, INC.,
Plaintiff,

v.

INDIAN MOTORCYCLE MANUFACTURING, INC.,
Defendant.

ORDER REGARDING RECEIVER'S MOTION FOR DETERMINATION REGARDING FEDERAL TAXES ORDER ENTERED BY MAGISTRATE JUDGE O. EDWARD SCHLATTER

The Receiver has filed a Motion for Determination That No Additional Taxes are Owed by Bankruptcy Trustee. The Internal Revenue Service (IRS) is the only party which is involved with this particular proceeding, and it has filed objections to the jurisdiction and propriety of this court hearing the Receiver's motion. It argued that the appropriate court to resolve the dispute was the Bankruptcy Court in Massachusetts, and that this court should not attempt to "oust" that court of its authority and jurisdiction. The IRS did not in its Response to the motion address the merits of the controversy.

Counsel for the Receiver, Mr. Jack Tanner, has informed me that a hearing on the subject of the Receiver's motion was conducted before Honorable Henry Boroff, Judge of the Bankruptcy Court for the District of Massachusetts, on December 28, 1999, and that Judge Boroff has ordered as follows: (1) that the underlying res, some $1 .2 million, be held in escrow by the Receiver here in the District of

Colorado, and (2) that because the Receiver is the party which is primarily affected by rulings with regard to the $1.2 million, the dispute with regard to taxation should be resolved in Colorado.

In light of the rulings of Judge Boroff, it is therefore ORDERED as follows:

1. The objections of the IRS with regard to the assertion of this court's jurisdiction over the subjects which are addressed in the Receiver's Motion for Determination of Taxe are overruled.

2. The IRS shall have until January 20, 2000, within which to respond to the merits of the Receiver's motion.

3. A hearing on the Receiver's motion shall be held on February 24, 2000, at the hour of 2:00 p.m. in Room C-169 of the U.S. Courthouse located at 1929 Stout Street, Denver, Colorado.

Dated at Denver, Colorado, this day of: January 10, 2000

BY THE COURT:

O. Edward Schlatter
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Senior Judge Zita L. Weinshienk

Civil Action No. 95-Z-777

ELLER INDUSTRIES, INC.,
Plaintiff,

V.

INDIAN MOTORCYCLE MANUFACTURING, INC.,
Defendant. :.

V.

UNITED STATES OF AMERICA,
Intervenor.

AMENDED ORDER

The matter before the Court is the United States' Motion For Reconsideration By District Court Of Order Regarding Receiver's Motion For Determination Regarding Federal Taxes, filed January 25, 2000. On January 10, 2000, Magistrate Judge 0. Edward Schlatter overruled the objections of the United States with regard to the assertion of this Court's jurisdiction over the Receiver's Motion For Determination Of Taxes, filed October 29, *1 999,* and ordered that the United States respond to the merits of the Receiver's motion. The Magistrate Judge also scheduled a hearing for the matter, which was stayed while the Court dealt with this motion.

The issue before the Court involves the tax liability of three debtors in bankruptcy who were involved in Chapter 7 actions in the United States Bankruptcy Court for the District of Massachusetts. The Massachusetts Bankruptcy Court appointed a Trustee in Bankruptcy (Trustee) for the debtor estates. Defendant Indian Motorcycle Manufacturing, Inc. has been placed in a receivership by this Court, and the Court has appointed Sterling Consulting Corporation as Receiver. Under a Joint Motion For Approval Of Stipulation Regarding Coordinated Sale And Coordinated Administration, approved by the Massachusetts Bankruptcy Court on January 1 9, 1 996, the assets of the receivership estate and the bankruptcy estates were combined for sale, and the net proceeds were allocated to the receivership estate.

The United States of America's motion to intervene in the main receivership action was filed on July 6, 1997, and granted on July 9, 1997. On October 29, 1999, the Trustee filed federal ncome tax returns for the years 1993-1998 in the Massachusetts Bankruptcy Court, along with a request under 28 U.S.C. § 505(b) for a prompt determination of federal tax liability. The United States acknowledges that the debtors' 1999 tax returns have been posted on the Receiver's web site, but believes that the Trustee has neither filed them with the Internal Revenue Service nor requested a 505(b) determination on them. Also on October 29, 1999, the Receiver filed in this Court the Receiver's Motion For Determination Of Taxes, requesting that the 1993-1999 tax returns be accepted as filed and that the Trustee, the Receiver, and their respective estates and successors be discharged from any liability therefore.

The United States opposed the order on the grounds of lack of subject matter jurisdiction n this Court, and did not respond on the merits. On December 31, 1999, in accordance with an order of the Massachusetts Bankruptcy Court, the Trustee transferred to the Receiver $1 .2 million to be held by

the Receiver pending a determination of any federal tax liability the Trustee may have had. An estimated $431 ,009 will inure to the benefit of the receivership estate if no taxes are owed. On January 10, 2000, the Magistrate Judge overruled the United States' objections to Receiver's Motion For Determination Of Taxes, ordered the United States to respond to the merits by January 20, 2000, and scheduled a hearing on the merits for February 24, 2000. The United States filed this appeal, thus staying the hearing.

The United States claims that the Court lacks subject matter jurisdiction over the tax liability of the bankruptcy estate. The United States argues three theories showing the Court acks subject matterjurisdiction. First, under 28 U.S.C. § 2201(a), taxpayers generally are barred
from seeking declaratory judgments as to tax liability. Declaratory judgments are permitted under I I U.S.C. § 505, but only in a bankruptcy court. Second, the resolution of tax liabilities does not affect the res of the receivership estate. Third, the United States has not waived its sovereign immunity, and thus is not subject to the jurisdiction of this Court in this matter.

The Receiver has adequately rebutted these points. The United States' focus on declaratory judgments is misplaced. Here, the Court has jurisdiction over all matters that affect the receivership estate. In United States v. labor, 943 F.2d 335, 341 (3° Cir. 1991), the Third Circuit noted "that the appointment of a receiver of a debtor's property by a federal court, confers upon the court federal jurisdiction to decide all questions incident to the preservation, collection and distribution of assets whether such questions are raised in the original suit or ancillary proceedings." (citing Riehie v Margolies, 279 U.S. 218, 223, 49 S.Ct. 310, 312, 73 L.Ed. 669 (1929)). Furthermore, the Court has original, albeit not exclusive, jurisdiction to hear any matter
that would be proper in a bankruptcy court. 28 U.S.C.

1334(a) and (b). Finally, when the United States chose to intervene, it assumed the status of a full participant in the case, and thus is vulnerable to complete adjudication by the Court of the issues in litigation. United States v.

Oregon , 657 F.2d 1009, 1014 (9' Cir. 1982).

The United States had the chance to argue against the transfer of funds in front of Judge Henry J. Boroff of the Massachusetts Bankruptcy Court. He ruled against the United States, explaining that it appeared that both Courts had jurisdiction over the matter, and he was satisfied to have this Court resolve the matter.

As questions ofjurisdiction are dispositive issues, the Court will treat the Magistrate Judge's order as a recommendation under 28 U.S.C. § 636(b)(1)(B), and the United States' motion for reconsideration as an objection under 28 U.S.C. § 636(b)(1)(C). After reviewing the Magistrate Judge's recommendation, Intervenor United States' objection, and the Receiver's response, the Court determines that the Magistrate Judge's recommendation is correct.

However, this Order involves a controlling question of law, namely the Court's jurisdiction over the United States and its determinations of tax liabilities for entities within the receivership estate, as to which there is substantial ground for difference of opinion. As an immediate appeal from this Order would advance the ultimate termination of the case, the Court finds that the conditions of 28 U.S.C. § 1292(b) are met, and the parties may appeal this Order to the Tenth Circuit. Accordingly, it is

ORDERED that Magistrate Judge O. Edward Schlatter's Order Regarding Receiver's Motion For Determination Regarding Federal Taxes will be treated as a recommendation under 28 U.S.C. § 636(b)(1)(B). It is

FURTHER ORDERED that Intervenor United States ofAmerica's Motion For Reconsideration By District Court Of Order Regarding Receiver's Motion For Determination Regarding Federal Taxes will be treated as an objection to the Magistrate Judge's recommendation under 28 U.S.C. § 636(b)(1)(C). It is

FURTHER ORDERED that the Magistrate Judge's recommendation is adopted and approved. It is

FURTHER ORDERED that the Court finds this issue is ripe for an appeal under 28 U.S.C. § 1292(b). It is

FURTHER ORDERED that Intervenor United States of America shall appear before the Magistrate Judge at a hearing on Receiver's motion on March 29, 2000 at 2:00 p.m. in Room C-169 at the United States Courthouse, 1929 Stout Street, Denver, Colorado.

Dated at Denver, Colorado, this 17 day of July, 2000, *nunc pro tunc* March 1 6, 2000.

BY THE COURT
ZITA L. WEINSHIENK,
Senior Judge United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Senior Judge Zita L. Weinshienk

Civil Action No. 95-Z-777

ELLER INDUSTRIES, INC.,
Plaintiff,

V.

INDIAN MOTORCYCLE MANUFACTURING, INC.,
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UNITED STATES OF AMERICA,
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ORDER

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The United States opposed the order on the grounds of lack of subject matter

Jurisdiction in this Court, and did not respond on the merits. On December 31, *1999,* in accordance with an order of the

Massachusetts Bankruptcy Court, the Trustee transferred to the Receiver $1 .2 million to be held by the Receiver pending a determination of any federal tax liability the Trustee may have had. An estimated $431,009 will inure to the benefit of the receivership estate if no taxes are owed. On January 1 0, 2000, the Magistrate Judge overruled the United States' objections to Receiver's Motion For Determination Of Taxes, ordered the United States to respond to the merits by January 20, 2000, and scheduled a hearing on the merits for February 24, 2000. The United States filed this appeal, thus staying the hearing.

The United States claims that the Court lacks subject matter jurisdiction over the tax liability of the bankruptcy estate. The United States argues three theories showing the Court lacks subject matter jurisdiction. First, under 28 U.S.C. § 2201(a), taxpayers generally are barred from seeking declaratory judgments as to tax liability. Declaratory judgments are permitted under II U.S.C. § 505, but only in a bankruptcy court. Second, the resolution of tax liabilities does not affect the res of the receivership estate. Third, the United States has not waived its sovereign immunity, and thus is not subject to the jurisdiction of this Court in this matter.

The Receiver has adequately rebutted these points. The United States' focus on declaratory judgments is misplaced. Here, the Court has jurisdiction over all matters that affect the receivership estate. In United States v. I Tabor, 943 F.2d 335, 341 (3' Cir. 1991), the Third Circuit noted "that the appointment of a receiver of a debtor's property by a federal court, confers upon the court federal jurisdiction to decide all questions incident to the preservation, collection and distribution of assets whether such questions are raised in the original suit or ancillary proceedings." (citing Kiehie v. Margolies, 279 U.S. 218, 223, 49 S.Ct. 310, 312, 73 L.Ed. 669 (1929)). Furthermore, the Court has original, albeit not exclusive, jurisdiction to hear any matter that would be

proper in a bankruptcy court. 28 U.S.C. 1334(a) and (b). Finally, when the United States chose to intervene, it assumed the status of a full participant in the case, and thus is vulnerable to complete adjudication by the Court of the issues in litigation. United States v. Oregon 657 F.2d 1009, 1014 (91 Cir. 1982).

The United States had the chance to argue against the transfer of funds in front of Judge Henry J. Boroff of the Massachusetts Bankruptcy Court. He ruled against the United States, explaining that it appeared that both Courts had jurisdiction over the matter, and he was satisfied to have this Court resolve the matter.

As questions of jurisdiction are dispositive issues, the Court will treat the Magistrate Judge's order as a recommendation under 28 U.S.C. § 636(b)(1)(B), and the United States' motion for reconsideration as an objection under 28 U.S.C. § 636(b)(1)(C). After reviewing the Magistrate Judge's recommendation, Intervenor United States' objection, and the Receiver's
response, the Court determines that the Magistrate Judge's recommendation is correct. Accordingly, it is

ORDERED that Magistrate Judge 0. Edward Schlatter's Order Regarding Receiver's Motion For Determination Regarding Federal Taxes will be treated as a recommendation under 28 U.S.C. § 636(b)(1)(B). It is

FURTHER ORDERED that Intervenor United States of America's Motion For Reconsideration By District Court Of Order Regarding Receiver's Motion For Determination Regarding Federal Taxes will be treated as an objection to the Magistrate Judge's recommendation under 28 U.S.C. § 636(b)(1)(C). It is

FURTHER ORDERED that the Magistrate Judge's

recommendation is adopted and approved. It is

FURTHER ORDERED that Intervenor United States of America shall appear before the Magistrate Judge at a hearing on Receiver's motion on March 29, 2000 at 2:00 p.m. in Room *C-169* at the United States Courthouse, 1929 Stout Street, Denver, Colorado.

Dated at Denver, Colorado, this 15th day of March, 2000.

BY THE COURT:
ZITA L. WEINSHIENK,
Senior Judge United States District Court

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

26 U.S.C. § 7421 (a) provides:

> Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6225(b), 6246 (b), 6331(i), 6672(b), 6694(c), and 7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any persons, whether or not such person is the person against whom such tax was assessed.

28 U.S.C. § 959 (a) provides:

> Trustees, receivers or managers of any property, including debtors in possession, may be sued, without leave of the court appointing them, with respect to any of their acts or transactions in carrying on business connected with such property. Such actions shall be subject to the general equity power of such court so far as the same may be necessary to the ends of justice, but this shall not deprive a litigant of his right to trial by jury.

28 U.S.C. § 2201(a) provides:

> In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding

under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.